



Comptroller General
of the United States

Washington, D.C. 20548

Gary 12/1/91

Decision

Matter of: Columbia Research Corporation

File: B-247073.3

Date: June 4, 1992

Paul Shnitzer, Esq., Crowell & Moring, for the protester, Stephen J. Gary, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that Small Business Administration (SBA) improperly determined that proposed awardee is a small business is dismissed where the record shows that SBA considered information cited by protester and reached a different conclusion; the Small Business Act gives the SBA, not GAO, the conclusive authority to determine matters of small business size status for federal procurements.

DECISION

Columbia Research Corporation (CRC) protests the proposed award of a contract to Technical Evaluation Research, Inc. (TERI), under request for proposals (RFP) No. DAAB07-90-R-B804, issued by the U.S. Army Materiel Command (AMC) as a total small business set-aside for engineering and technical services. CRC contends that the Small Business Administration (SBA) erroneously determined that TERI is a small business for purposes of this procurement.

The solicitation sought proposals for engineering and technical services in connection with various United States Army Communications and Electronics Command (CECOM) systems. The solicitation listed three major evaluation factors, including technical, management and price. The subfactor at issue here, Personnel Experience, was one of three subfactors under the technical factor. The solicitation required that an offeror be found either acceptable or outstanding under each subfactor.

Four proposals were received in response to the solicitation; all were included in the competitive range. After discussions, all offerors were requested to submit best and final offers (BAFO). CRC, the incumbent, proposed a price of \$8,542,597, compared to TERI's low price of \$6,079,310. AMC found both proposals technically acceptable, and concluded, on the basis of its significantly lower price,

that TERI's proposal offered the most advantageous proposal overall. Upon being notified of the proposed award to TERI, CRC requested a debriefing. At the debriefing, AMC advised CRC that TERI had been found acceptable under the personnel experience subfactor. On the same day, CRC filed a size-status protest with SBA.

CRC argued in its size-status protest to SBA that TERI could not satisfy the requirements of the RFP without substantially utilizing the professional and technical employees of a proposed subcontractor, LOGICON Eagle Technology, Inc., a large business; that such use, in effect, made TERI and LOGICON joint venturers; and that TERI, through its affiliation with a large business, was ineligible for award under this small business set-aside. SBA, however, denied CRC's protest, finding that TERI was a small business concern under the applicable size standard.

Following receipt of SBA's decision, CRC filed a second protest with our Office challenging AMC's determination that TERI was acceptable under the personnel experience subfactor. In responding to that protest, AMC for the first time provided CRC with the resumes that TERI had submitted with its proposal. Based on the protester's analysis of those resumes, CRC filed this protest.

CRC maintains that the SBA "failed to consider the available information." Specifically, while only 23 of TERI's proposed personnel are current TERI employees, 35 are current LOGICON employees. CRC considers this preponderance of large-business personnel to be particularly significant because, under the contract, selection of the specific personnel to work on any delivery order is at the discretion of the contractor, so long as acceptable resumes have been submitted for the personnel under the proper categories of work. CRC concludes that "it is therefore quite possible that if TERI were allowed to perform, LOGICON personnel would perform substantially in excess of 50 percent of the technical and professional work."

The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.3(m)(2) (1992); see Isidor Stern Enters. Corp., B-243265, July 17, 1991, 91-2 CPD ¶ 65. As noted by CRC, however, in certain limited circumstances, we have reviewed SBA's decision not to issue a certificate of competency (COC) even though, as with respect to the determination of size status, SBA has the statutory authority to conclusively determine the responsibility of a small business concern. 15 U.S.C. § 637(b). Specifically, we have reviewed the denial of a COC where a protester alleges that bad faith or fraudulent actions on the part of

government officials resulted in a denial of the protester's opportunity to seek SBA review, or that the SBA's denial of a COC was made as the result of bad faith or a failure to consider vital information bearing on the firm's responsibility. COSTAR, B-240980, Dec. 20, 1990, 90-2 CPD ¶ 509. CRC asks that we review the SBA's denial of its size status protest because, according to the protester, that denial resulted from SBA's failure to consider that TERI proposed more employees from its large business subcontractor than from its own concern.

We decline to review the SBA's size status determination. In its decision, the SBA states that it considered TERI's technical and price proposals; LOGICON's proposal to TERI, "reflecting 0-5% participation"; TERI's personnel resources applicable to the requirements of the solicitation; and "certification" from TERI that:

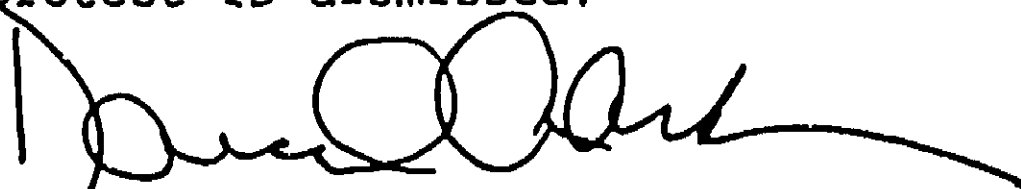
"TERI personnel will constitute 95% to 100% of the workforce on this contract. TERI personnel will report directly to TERI's program manager, a key employee, and will be on TERI's payroll. Contract management and responsibility will rest with TERI and their key personnel involved in this effort. Work will be conducted in TERI facilities."

The SBA concluded:

"From analysis of documentation provided, TERI does not have unusual reliance on this subcontractor. The preponderance of evidence indicates that TERI's proposed subcontract with LOGICON does not rise to the level of a joint venture/affiliation, since their agreement reflects a minimal share of the work to be performed by the subcontractor. TERI will be performing the vast majority of the work associated with this contract and there is no evidence of any other business relationships between TERI and LOGICON, other than a normal prime contractor/subcontractor involvement."

Thus, in our view, the record indicates that the SBA's decision, contrary to CRC's assertion, was in fact based on the available information.

The protest is dismissed.



David A. Ashen
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